

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL W. HIATT and MARILEEN J.  
MCMAHON,

Defendants.

CASE NO. C10-5333BHS

ORDER GRANTING  
PLAINTIFF'S MOTION TO  
DISMISS

This matter comes before the Court on the United States' motion to dismiss Defendant Paul W. Hiatt's ("Hiatt") counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, to strike Hiatt's counterclaim. Dkt. 77. The Court has reviewed the brief filed in support of the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On May 5, 2011, the United States filed a motion to dismiss Hiatt's counterclaim pursuant to Rule 12(b)(6) or, in the alternative, to strike Hiatt's counterclaim. Dkt. 77. Hiatt did not oppose the motion.

**II. DISCUSSION**

A pro se litigant must follow the same rules of procedure that govern other litigants. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). When "a party fails to file

1 papers in opposition to a motion, such failure may be considered by the court as an  
2 admission that the motion had merit.” Local Rule CR 7(b)(2). Accordingly, because  
3 Hiatt failed to oppose the United States’ motion, the Court considers this an admission  
4 that the motion has merit.

5 While the Court can liberally construe a pro se party’s counterclaim, it cannot  
6 supply essential elements of a claim that are not plead. *See Pena v. Gardner*, 976 F.2d  
7 469, 471 (9th Cir. 1992). Dismissal under Rule 12(b)(6) for failure to state a claim is  
8 appropriate if the complaint fails to provide the defendant fair notice of a legally  
9 cognizable claim and notice of the grounds on which it rests or if the counterclaim fails  
10 to raise the right to relief above the speculative level. *See Bell Atl. Corp. v. Twombly*,  
11 550 U.S. 544, 555 (2007).

12 Here, Hiatt asserts counterclaims “acquired or maturing at any time during  
13 pendency of this action” but fails to provide any element of any claim. Dkt. 34 at 5.  
14 Therefore, the Court grants the United States’ motion because Hiatt failed to state a  
15 claim for which this Court may grant relief.  
16

### 17 III. ORDER

18 Therefore, it is hereby **ORDERED** that the United States’ motion to dismiss  
19 Hiatt’s counterclaim is **GRANTED**.

20 DATED this 24th day of May, 2011.

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23 BENJAMIN H. SETTLE  
24 United States District Judge  
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